IN THE UNITED STATES DISTRICT
COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	Criminal No. 7:19-cr-00522
	§	
DANIEL GARCIA	§	

**MOTION TO PRECLUDE CONSULTATION BETWEEN GOVERNMENT
AND TESTIFYING WITNESSES DURING BREAK IN TRIAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DANIEL GARCIA, Defendant in the above entitled and numbered cause,

by and through his attorney of record, and moves this Court to enter an order under the authority

of *Perry v. Leeke*, 109 S.Ct. 594 (1989) precluding the Government or its agents or representatives

from conversing with witnesses who are presently testifying during any break in the trial. In

support hereof, Defendant would show as follows:

I.

In *Perry v. Leeke*, the Supreme Court upheld an order by a trial court which precluded the

Defendant from conferring with his attorney during a 15 minutes break between direct and cross

examination. In reaching the decision, the Court noted as follows:

> "[W]hen a Defendant becomes a witness, he has no constitutional right to consult
> with his lawyer while he is testifying. He has an absolute right to such consultation
> before he begins to testify, but neither he nor his lawyer has a right to have the
> testimony interrupted in order to give him the benefit of counsel's advice."

> "The reason for the rule is one that applies to <u>all witnesses-not just defendants</u>.
> [emphasis supplied] It is common practice for a judge to instruct a witness not to
> discuss his or her testimony with third parties until the trial is completed. Such non-

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discussion orders are a corollary of the Broader rule that the witness be sequestered to lessen the danger that their testimony will be influenced by hearing what other witnesses have to say and to increase the likelihood that they will confine themselves to truthful statements based on their own recollections. ...[W]hen he assumes the role of a witness, the rules that generally apply to other witnesses - rules that serve the truth seeking function of the trial - are generally applicable to him as well. Accordingly, it is entirely appropriate for a trial judge to decide, after listening to the direct examination of any witness, whether the Defendant or non-defendant, that cross examination is more likely to elicit truthful responses if it goes forward without allowing the witness an opportunity to consult with third parties, including his or her lawyer.

109 S.Ct. at 600-601.

II.

As can be gleaned from a fair reading of the passage, this is equally applicable to the Government's witness.

Accordingly, the Defendant requests that the Court enter an order precluding consultation between the Government and any Government's witnesses during the witness' testimony.

Respectfully submitted,

By:___/s/ Clay S. Conrad___
  Clay S. Conrad
  State Bar No. 00795301
  LOONEY, SMITH & CONRAD, P.C.
  11767 Katy Freeway, Suite 740
  Houston, Texas 77079
  Ph. No. (281) 597-8818
  Fax No. (281) 597-8284
  ATTORNEY FOR DEFENDANT

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Motion has been electronically delivered to the Assistant United States Attorneys responsible for litigation of this cause on March 17, 2020.

/s/ Clay S. Conrad
CLAY S. CONRAD

CERTIFICATE OF CONFERENCE

I hereby certify that I have conferred with Mr. Roberto Lopez, Assistant United States Attorney for the Southern District of Texas, on March 17, 2020, and that he was unopposed to the granting of this motion.

/s/ Clay S. Conrad
CLAY S. CONRAD

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	**Criminal No. 7:19-cr-00522**
	§	
DANIEL GARCIA	§	

ORDER

On this the _____ day of _____, 2020, came to be considered Defendant's

Motion to Preclude Consultation Between Government and Testifying Witnesses During Break in

Trial, and said motion is hereby GRANTED.

SIGNED this _____ day of _____, 2020.

_____
JUDGE PRESIDING

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